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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,703	12/23/2003	S. Donald Jamison	02057.0173	6215

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EXAMINER

FLANIGAN, ALLEN J

ART UNIT PAPER NUMBER

3753

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/743,703

Applicant(s)

JAMISON ET AL.

Examiner

Allen J. Flanigan

Art Unit

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30,32-35,38 and 39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30,32-35,38 and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

As stated in the section cited by the applicants in their remarks (MPEP 1449.02), in order to provoke an interference by filing a reissue application, “the reissue oath/declaration must assert that applicant erred in failing to include claims of the proper scope to provoke an interference in the original patent application.” The reissue declaration should be amended to include such an assertion, or comparable language (e.g. “the applicant erred in failing to include claims sufficiently similar in scope to those contained in US patent XXXXXXXX to provoke an interference between the original application and the patent”).

Claims 1-30,32-35,38 and 39 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

Claims 23-30, 32-35, 38, and 39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the

inventor(s), at the time the application was filed, had possession of the claimed invention.

Please see the comments made in regard to the above rejection in the previous Office action.

Applicant's arguments filed 4/20/2006 have been fully considered but they are not persuasive.

As pointed out previously, applicants cannot make the claims of Brost et al. As the applicants' own disclosure points out (lines 49-55 of column 3), applicants rely on a seal between essentially linear edge portions 64 of the offset end flanges and the side walls 70, 72 of the manifolds. Brost et al., in contrast, provide "planar portions" that engage in "substantial surface to surface contact" with the walls of the manifold. No such feature is disclosed in the original patent specification. Applicants' comments on page 13 of the recent response completely misconstrue the structure and claims of Brost et al. The segment labeled "planar portion" in applicants' reproduction of Figs. 3a and 3e of Brost et al. is actually the "side walls . . . adapted to contact a side wall of an adjacent tube in the core" in claim 1, and similarly in claim 8 "at least one side wall in said formed segment adapted to contact and seal against the side wall of an adjacent one of said tubes". These elements correspond to applicant's disclosed edge portions 62. The claimed "planar portions" of Brost et al. are shown as being separated or bifurcated portions of the end walls 30

in Fig. 3a, for example. In the two piece construction shown in Fig. 3c, the u-shaped tube halves are shown with legs 40 extending perpendicular to the side walls 36, 38, and as described in column 5 of Brost et al., the legs 40 of the two halves are joined to form the end walls of the tube, where “the two halves may be left unjoined for a distance “d” at the end of the tube to form the bifurcated segment of the end walls 30” (lines 36-42). Thus, the end portions of these legs 40 correspond to the claimed “planar portions”, not the end portions of the side walls 36, 38. Applicant has no structure corresponding to these claimed “planar portions”, nor any structure corresponding to the claimed “substantial surface to surface contact” between the manifold walls and the claimed planar portions.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen J. Flanigan whose telephone number is (571) 272-4910. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Keasel can be reached on (571) 272-4929. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Allen J. Flanigan
Primary Examiner
Art Unit 3753